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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 2 of 2005

in

INCOME TAX REFERENCE (LODG.) NO. 542 OF 1984

M/s. Ishwar Bhuvan Hindu Hotel ... Applicant.

vs.

The Commissioner of Income Tax ... . Respondent

Mr. P. J. Pardiwala for Applicant.
Mr. Parag Vyas for Respondent

CORAM: V. C. DAGA AND A. S. AGUIAR JJ.

Date: 10th August, 2005.

P. C. :

1. By this reference, the Tribunal has referred the following question of law for our opinion, arising out of order passed in I.T.A. No. 455 / Bom/82, for Assessment Years 1981-82 and 1982-83, under section 256(1) of the Income-tax Act at the instance of the Revenue:

(1) Whether on the facts and in the circumstances of the case, a legal and valid partnership could be constituted between Shri I.P. Barot representing his Hindu Undivided Family as Karta and his son Shri Mahesh I. Barot, a member of the said HUF, notwithstanding the fact that Shri Mahesh I. Barot, had not contributed any capital out of his separate and individual property but was only a working partner?

2. Whether on the facts and in the circumstances of the case, the assessee could be assessed to tax as an

unregistered firm for the Assessment Year 1978-79 even after the share of one of the partners of the firm viz., Shri I. P. Barot, was already assessed in his hands?

2. Heard learned counsel appearing for the rival parties. A similar questions referred for our opinion in the case of the assessee itself for the subsequent Assessment Years 1979-80 and 1980-81 were already answered by us vide our order dated 27th June 2005 passed in ITR 73 of 1988 in the case of Ishwar Bhuvan Hindu Hotel ... Applicant vs. The Commissioner of Income Tax ..... Respondent [unreported].

3. For the reasons recorded therein the first question is answered in the affirmative i.e., in favour of the assessee, against the revenue. So far as the second question is concerned the parties agree that in view of our answer to the first question, the second question need not be answered. Hence second question is returned unanswered by consent of parties. This reference accordingly stands disposed of in terms of this order, with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)